

LAND.

25° GEO. V., No. XLVI.

No. 47 of 1934.

AN ACT to amend the Land Act, 1933.

[Assented to 21st January, 1935.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the *Land Act Amendment Act*, 1934, and shall be read as one with the Land Act, 1933, hereinafter referred to as "the principal Act." Short title.

2. (1.) Section six of the principal Act is hereby amended, as follows:— Amendment of s. 6 of the principal Act.

(a) by adding at the end of subsection (2) the words "and of holding and disposing of real or personal property";

(b) by striking out the words "hereinbefore or hereinafter," in subsection (3), and inserting the words "heretofore or hereafter" in their stead.

(2.) The amendments effected by this section shall have effect as from the commencement of the principal Act.

3. Section thirteen of the principal Act is hereby amended— Amendment of s. 13 of the principal Act.

(a) by inserting after the word "all," in the first line thereof, the words "approvals to applications, permits to occupy";

- (b) by striking out the word “and,” in the first line of the section, and inserting after the word “instruments,” in the same line, the words “and notices required to be served on the Registrar of Titles”;
- (c) by the addition of the following proviso:—

Provided that every such document which may by this section be signed by such authorised officer, and which prior to the commencement of this proviso has been signed by an officer of the Department of Lands and Surveys not in fact authorised by the Governor, shall be as valid and effectual as if such officer had been duly authorised by the Governor under this section.

Amendment of
s. 16 of the
principal Act.

4. Section sixteen of the principal Act is hereby amended by the addition thereto of the following subsection:—

- (5) No lease shall be granted under this Act of an area greater than that prescribed as the maximum area which one person may lawfully hold under this Act.

Amendment of
s. 18 of the
principal Act.

5. Section eighteen of the principal Act is hereby amended by adding subsections, as follows:—

- (4) On receiving notice from the Minister of any such amendment to a lease registered as a Crown lease under the Transfer of Land Act, 1893, and its amendments, together with a plan certified by the Surveyor General showing the original boundaries and the amended boundaries, the Registrar of Titles shall amend both the original and the duplicate Crown lease in accordance with such notice and plan.
- (5) Any Crown lease which has been heretofore amended by the Registrar of Titles to conform to any amendment of boundaries made pursuant to this section, or pursuant to the provisions of the Land Act, 1893, and its amendments, shall be deemed to have been lawfully amended.
- (6) If any lease so amended under this section is subject to any encumbrance or if an amendment has already been made in a lease as referred to in the last preceding subsection and that lease was subject to any encumbrance at the date of such amendment, then by force of this Act such encumbrance shall be deemed

to attach or to have attached to the land included in the boundaries of such lease as amended as if such land had been the subject of the lease at the date of such encumbrance.

6. Section forty-eight of the principal Act is hereby amended by adding the following additional proviso:—

Amendment of
s. 48 of the
principal Act.

Provided further, that upon any such transfer the Minister shall notify the Registrar of Titles as to any increase in price and any consequential adjustment of the rent by reason of such transfer, and the Registrar shall indorse the lease accordingly.

7. A new section is added after section sixty-three in Part V. of the principal Act, as follows:—

New section.

63A. In respect of any conditional purchase lease granted under Parts V. or VI. of the Land Act, 1898, or granted before or after the commencement of this section under Part V. of the principal Act—

(a) if it is proved to the satisfaction of the Governor, after due regard has been given to the quality, productiveness, distance from railway, market, or port, or any other circumstances connected with the land the subject of the lease, that the price reserved by the lease is excessive, or if it is proved that the land is infested with indigenous poison plants, or the harmful species of wodjil as a dominating growth, the Governor may at his discretion reduce the price of such land to not less than one shilling per acre, exclusive of the value of improvements (if any) and survey fees:

Provided that, on any such reduction being made, the lessee shall not receive a refund of rent, if any, already paid prior to the date of such reduction, nor shall the liability of the lessee for payment to that date of the rent, if any, reserved by the lease be affected, but any credit in favour of the lessee which shall result by any such reduction shall be placed to the lessee's credit without affecting, however, his liability to continue the payment of the annual rent at the reduced rate per acre until the purchase price adjusted as aforesaid and reduced by the amount so placed to his credit is fully paid:

Provided further, that the grant in fee simple of land the rental of which has been reduced on the ground that such land is infested with indigenous poison plants shall not be approved until such poison plants are eradicated to the satisfaction of the Minister.

- (b) The Minister may defer payment of rent reserved by the lease for any period not exceeding five years, and may—
- (i) direct that the amount payable as annual rent under the terms of the lease shall be increased for the balance of the existing term of the lease to the intent that payment of the full price for the land shall be made within the term of the lease; or
 - (ii) direct that the term of the lease shall be extended for a like period to that for which the rent is deferred: provided that no extension shall be granted so that the extension added to the original term shall exceed thirty years, and provided further, that, if necessary, the annual rental shall be proportionately increased to the intent that the payment of the price of the land shall be made in full within the extended term of the lease.

The Minister shall notify the Registrar of Titles of any alteration of rental and/or extension of term made under the provisions of this section in respect of any lease registered as a Crown lease under the provisions of the Transfer of Land Act, 1893, and its amendments, and the Registrar shall indorse the original and duplicate lease accordingly.

New section.

8. A new section is added in Part V. of the principal Act, as follows:—

When a lease has already expired, Minister may grant extension of time to pay balance of rent.

63B. (1) The Minister may grant an extension of the term of any conditional purchase lease granted under the provisions of Part V. or Part VI. of the Land Act, 1898, which has expired or shall have expired at the time of the granting of such extension, where the full purchase price has not been paid at such date of expiry.

(2.) Any such extension shall be for a period not exceeding five years from the date of the expiration of the lease, and during that period the lessee shall make payment of the balance of the purchase price.

(3.) The annual rental payable for the period of such extension shall be that amount which represents the total balance of purchase money remaining owing divided by the number of years of such extended period. Such annual rental shall be payable by equal instalments half-yearly in advance, on or before the first day of March and the first day of September in every year, and the first of such instalments shall be deemed to become due on the next half-yearly day following the date on which the term had expired. Failure to pay the said rental on the due dates shall render the lessee liable to the prescribed fines and penalties and the lease liable to forfeiture.

(4.) Subject to the provisions of this section, the extension of the term of any lease under this section shall not be deemed a waiver of the right of His Majesty or the Minister to enforce the observance of any covenant, condition, or regulation under which the lease is held, or the forfeiture thereof, for a breach of any covenant, condition, or regulation committed before or after the granting of such extension of term.

(5.) In regard to any such lease which is registered as a Crown lease under the provisions of the Transfer of Land Act, 1893, and its amendments, the Minister shall notify the Registrar of any such extension and of the annual rent payable during the period of such extension. The Registrar shall thereupon indorse the original lease and the duplicate lease accordingly, and such lease shall, by force of this Act, be deemed to have been extended, subject to any alteration as regards the rental, as though the term had continued uninterruptedly, and all encumbrances registered against such lease shall, by force of this Act, have effect against the lease with such extended term.

9. Section sixty-six of the principal Act is hereby amended—

Amendment of
s. 66 of the
principal Act.

(a) by the addition of the following proviso to subsection (2):—

Provided, however, that where the area of a homestead farm constitutes portion of a surveyed location and the selector of the homestead farm is the holder of a conditional purchase lease of the balance of such surveyed location, then the occupation certificate shall have the same currency and term as the conditional purchase lease.

(b) by adding the following proviso to subsection (3):—

Provided that, if the Crown grant of the home-stead farm be not obtained by the selector within seven years from the commencement of the term of the occupation certificate, then the protection conferred by this subsection on the selector shall cease to have effect.

Amendment of
s. 97 of the
principal Act

10. Section ninety-seven of the principal Act is hereby amended by adding subsections, as follows:—

(5) When any reserve, road, or stock route comprising land within or adjoining the boundaries of a pastoral lease is—

(i) found on survey or otherwise to be incorrectly shown in the plan on the pastoral lease in relation to the boundaries of any such land; or

(ii) cancelled or closed, as the case may be, as regards such land or the position thereof is altered in such a way as to affect the boundaries of the pastoral lease the Minister may direct—

in case (i) that the said plan be corrected;

in case (ii) that the said lands be added to the area of the pastoral lease or that the boundaries be amended to conform to such alteration in position and that the rent be adjusted accordingly.

(6) The Minister shall give notice to the Registrar of Titles of any amendment made under this section to the boundaries (and area and rental, if altered) of a Crown lease registered under the Transfer of Land Act, 1893, and its amendments, and such notice shall be accompanied by a plan, certified by the Surveyor General, showing the original and amended boundaries, and the Registrar, on receipt of such notice and plan, shall amend the original and duplicate lease in accordance therewith.

(7) If any pastoral lease amended under this section is subject to any encumbrance, then, by force of this Act, such encumbrance shall be deemed to attach to the land included in the boundaries of the pastoral lease as amended as if such land had been the subject of the lease at the date of such encumbrance.

11. Section one hundred and six of the principal Act is hereby amended—

Amendment of
s. 106 of the
principal Act.

- (a) in paragraph (b), by striking out the words “and to fell, cut, and remove all or any timber, sandalwood, or other woods,” in lines two and three of that paragraph;
- (b) in paragraph (c), by striking out the words “to cut, remove, and cart away any timber, sandalwood, or other woods or,” in lines two and three of that paragraph; and also by striking out the words “growing or,” in the fourth line thereof.
- (c) by adding a new subsection, as follows:—
 - (2) The aboriginal natives may at all times enter upon any unenclosed and unimproved parts of the land the subject of a pastoral lease to seek their sustenance in their accustomed manner.

12. Section one hundred and fifteen of the principal Act is hereby amended by the addition of the following subsection:—

Amendment of
s. 115 of the
principal Act.

- (2) On production to the Registrar of Titles of a transfer by a lessee of his interest in any portion of the land the subject of the pastoral lease registered under the Transfer of Land Act, 1893, and its amendments, and subject to the indorsement on the transfer of the approval of the Minister thereto, and a certificate from the Minister showing the adjusted area, and the adjustments to be made in the rental by reason of such transfer, the Registrar shall register the transfer and indorse on the lease a memorandum cancelling the same, so far as it affects the portion of the land the subject of the transfer, and enter on the said lease a memorandum of the rent thenceforth payable in respect to the remaining land. Upon the registration by the Registrar of such transfer the Minister shall issue a new lease to the transferee in respect of the land transferred to him.

13. Section one hundred and twenty-eight of the principal Act is amended by adding the following subsections:—

Amendment of
s. 128 of the
principal Act

- (2) The Governor may, on the grounds stated in the previous subsection, reduce the said least aggregate sale price of any land sold under the provisions of the Agricultural Lands Purchase Act, 1909, and amendments, or sold under the provisions of this

Part of this Act, whether before or after the commencement of this subsection, and adjust the rental over the balance of the lease accordingly: Provided that the liability of the lessee for the payment of the rent reserved by the lease up to the date of such reduction shall not be affected, and in making such adjustment the lessee shall not be entitled to any cash refund of any part of the rent already paid, but the same shall be placed to the lessee's credit and utilised to pay off the instalments of rent (calculated on the basis of the reduced price) from time to time falling due under the lease. Save, as aforesaid, the obligations of the lessee under the lease shall not be affected.

- (3) The Minister shall notify the Registrar of Titles of any such reduction and the particulars of any such adjustment, and the Registrar shall indorse a memorandum thereof on the original and on the duplicate of the Crown lease registered in the office of Titles.

Amendment of
s. 149 of the
principal Act.

14. Section one hundred and forty-nine of the principal Act is hereby amended, as follows:—

- (a) by inserting after the figures "1898," in line four, the words "or is subject to a caveat lodged under section one hundred and fifty-two of this Act, or under section seventy-five of the Land Act Amendment Act, 1906";
- (b) by inserting after the word "mortgage," in line five, the words "or caveat";
- (c) by inserting after the word "discharged," in line seven, the words "or caveat, unless withdrawn, removed or lapsed";
- (d) by inserting after the word "mortgage," wherever the same occurs in lines ten, twelve, and thirteen, the words "or caveat";
- (e) by inserting after the word "shall," in line sixteen, the words "in the case of a mortgage";
- (f) by inserting after the word "contrary," at the end of the first paragraph, the words "or, in the case of a caveat, as if it were a caveat lodged under the provisions of the Transfer of Land Act, 1893, in respect of the estate or interest specified therein."

Citation of
principal Act
as amended.

15. The principal Act as amended by this Act may be cited as the Land Act, 1933-1934.